

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF THE OPERATING CAPACITY)	
OF MARTIN COUNTY WATER DISTRICT)	CASE NO. 2002-00116
PURSUANT TO KRS 278.280)	

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered this 20th day of October, 2003, by and between the STAFF OF THE PUBLIC SERVICE COMMISSION OF KENTUCKY ("Commission Staff") and MARTIN COUNTY WATER DISTRICT ("Martin District").

W I T N E S S E T H :

THAT, WHEREAS, the Commission Staff issued a Utility Inspection Report dated April 5, 2002 ("Inspection Report") describing the results of an inspection of Martin District's facilities and records conducted on April 4, 2002; and

WHEREAS, Commission Staff in its Inspection Report described Martin District's water treatment plant as "in a general state of disrepair," noted that the plant had "lost most of the redundancy that was designed into it due to equipment failure," and expressed the concern that further equipment failure would render the plant "unable to supply water to... [Martin District's] distribution system"; and

WHEREAS, on April 5, 2002, the Public Service Commission initiated an investigation to address the conditions described in the Investigation Report and the long term actions necessary to ensure the continuity of service to Martin District's customers; and

WHEREAS, following a hearing on the conditions of Martin District's water treatment plant, the Public Service Commission on July 1, 2002 expanded the scope of its investigation "to assess the current condition of Martin District's operations and management, to determine the rules, methods, and practices that are required to ensure the water district provides adequate and reasonable service, and to restore public confidence in the water district's operations"; and

WHEREAS, Commission Staff extensively investigated Martin District's management and operations and filed written testimony with the Public Service Commission regarding its findings and recommendations; and

WHEREAS, Martin District and Commission Staff have agreed to the actions necessary to ensure the water district provides adequate and reasonable service; and

WHEREAS, Martin District and Commission Staff further agree that Martin District constructed during calendar years 2000 and 2001 a raw water supply pipeline at a total cost of \$2,852,048 without obtaining a Certificate of Public Convenience and Necessity from the Public Service Commission and that such action is contrary to KRS 278.020(1); and

WHEREAS, Martin District and Commission Staff desire to settle the issues raised by this proceeding;

NOW, THEREFORE, Martin District and Commission Staff agree as follows:

1. Martin District shall take the following actions:

A. Martin District will prepare and develop, no later than 180 days after the date this agreement is executed, a long-range plan for the provision of water service to Martin District's service area. This plan will set forth Martin District's objectives for the next 10 years, prioritize these objectives, and set forth a program for

achieving these objectives. It will include Martin District's plan for establishing telemetry and SCADA systems, shall make provisions for repairs to the existing treatment and distribution system and for system expansions (distribution and treatment) to meet demand for water services in Martin District's territory, and state a target date for completion of a thorough hydraulic analysis of Martin District's system that is calibrated by field measurements. Martin District shall review and, where appropriate, update this plan annually. It will annually file any revisions of this plan with the Public Service Commission on or about March 31 with its annual report.

B. Martin District will develop and submit to the Public Service Commission, no later than 30 days after the date this agreement is executed, a program for testing water meters. This plan shall provide for submission of quarterly reports to the Public Service Commission commencing no later than December 1, 2003.

C. Martin District will develop and submit to the Public Service Commission, no later than 60 days after the date this agreement is executed, a safety program covering the operation of all of its facilities.

D. Martin District will develop and submit to the Public Service Commission no later than 270 days from the execution of this agreement a written inspection procedure to assure a safe and adequate operation of its system components and facilities. These procedures will include provisions regarding the contents and maintenance of inspection records.

E. Martin District will develop and submit to the Public Service Commission, no later than 30 days after the date this agreement is executed, a program to test all of the flush hydrants within its system. Implementation of this program will begin no later than December 1, 2003. The Signatories to this Agreement recognize that full implementation of such program will depend upon the hydraulics of Martin District's system.

F. Martin District will develop and submit to the Public Service Commission, no later than 30 days after the date this agreement is executed, a program for charting, inspecting and exercising the valves in its distribution

system. Implementation of this program will occur no later than December 1, 2003.

G. Martin District will maintain inspection records on its system components and facilities as of the date of this Agreement in accordance with Administrative Regulation 807 KAR 5:006, Section 25(3).

H. Martin District will maintain a record of customer complaints in accordance with Administrative Regulation 807 KAR 5:006, Section 9.

I. Martin District will file monthly with the Public Service Commission, beginning no later than 30 days after the date of the execution of this agreement and continuing for a period of at least 36 months, a report listing all customer complaints, boil water advisories, all notices of violation that the Division of Water of the Kentucky Cabinet of Natural Resources and Environmental Protection, issued against Martin District during the previous month, all repairs required by agreement that were conducted in the previous month, the status of all repairs required by the agreement, the minutes of the previous month's meetings of Martin District's Board of Commissioners, any changes in the membership of the Martin District Board of Commissioners, any changes in the persons who serve as Martin District's certified water treatment plant operators or distribution system operators, and any changes in Martin District's bylaws. These reports shall replace the semi-monthly reports that the Public Service Commission currently requires pursuant to its Order of June 1, 2002. Upon the Public Service Commission's approval of this Agreement, any reporting requirement that the Public Service Commission previously established by Order in Case No. 2002-00116 shall terminate.

J. Martin District shall develop and submit, no later than 30 days after the date of the execution of this agreement, a water shortage response plan to the Public Service Commission for approval.

K. Martin District shall develop and submit to the Public Service Commission, within 180 days after the date of this agreement, as part of its long-range plan a plan for installing, repairing and maintaining a functioning telemetry system.

L. Martin District shall, no later than 90 days after the date of the execution of this agreement, take all actions necessary to repair its existing radio signaling equipment that is presently installed on its facilities and to ensure that such equipment is fully functional.

M. Martin District shall develop and submit to the Public Service Commission, no later than 270 days after the execution of this agreement, a plan for inspecting all water storage tanks. This plan shall specify a schedule for water tank inspections and shall provide for periodic inspections of all water storage tanks after completion of the initial inspections. Initial inspections shall begin no later than November 15, 2003 and be completed no later than November 15, 2004. After the inspection of each water storage tank, Martin District will prepare a report of the findings of the inspection and submit this report to the Public Service Commission. Within 60 days of the filing of such report with the Public Service Commission, Martin District will submit to the Public Service Commission a written plan for repairing or correcting all noted problems or deficiencies. The Signatories agree that completion of all inspections is subject to the availability of funding.

N. Martin District will commission, implement, and complete a preliminary engineering and operational review of its facilities and system no later than July 15, 2003. It shall submit to Public Service Commission, no later than July 30, 2003, the findings of this review and a detailed plan for implementing these findings.

O. Martin District will perform a review of security at all facilities and submit to the Public Service Commission, no later than 30 days after the date of the execution of this agreement, the report of this review and a plan for implementing the report's recommendations. Martin District will implement the report's recommendations or correct all noted deficiencies as soon as possible, but no later than January 1, 2004, provided that funding to make such corrections is available.

P. Martin District will, no later than February 1, 2004, make all necessary improvements and repairs to enable automatic control of all pumping stations that are presently equipped with automatic controls.

Q. Martin District will, no later than no later than 30 days after the date of the execution of this agreement, report to the Public Service Commission in writing on its plan to install a new billing system.

R. Martin District will develop and implement procedures and controls designed to improve the accuracy of monthly meter readings. These procedures should include employee training on the detection of water leaks and theft of water service.

S. Martin District will immediately cease computing a late payment penalty on taxes for water service in accordance with Martin District's tariff until such time as Martin District's tariff is revised to permit such computation.

T. Martin District will review all customer accounts no later than 30 days after the date of the execution of this agreement to ensure that sales tax is collected from all non-residential customers that do not provide a tax exemption certificate and develop a procedure to evaluate new applicants for service to ensure that taxes are collected as appropriate. Martin District should provide procedures used to correctly code customers in the new billing system to ensure proper application of taxes.

U. Martin District will immediately begin billing all sewer customers served through the Pride Demonstration Program for sewer service, will bill for any unbilled service received within 2 years of the Settlement Agreement, and will exercise its best efforts to collect for such unbilled service.

V. Martin District will assess and charge all fees for the services set forth in its filed rate schedules and uniformly apply all rules and conditions of service set forth in its filed rate schedules.

W. Martin District will develop and implement appropriate cash management procedures including maintenance of a check register or other cash disbursement journal with an ongoing balance. These procedures should also include procedures for investment of surplus funds and financial planning.

X. Martin District will perform bank statement reconciliations on a timely basis monthly. Any individual

without direct responsibilities for handling or accounting for cash will receive bank statements and prepare reconciliations.

Y. Martin District will document the Martin District Board of Commissioners' review of all proposed disbursements by having Martin District's chairman and secretary initial or sign invoices approved for payment or sign a list of proposed disbursements that includes the vendor and amount of each proposed disbursement. If a list of proposed disbursements is used, the list shall be maintained with the minutes of board of commissioners' meeting.

Z. Martin District's Board of Commissioners will elect a member to serve as treasurer. This member shall sign all checks that Martin District issues.

AA. Martin District will implement appropriate procedures for management's review of invoices including matching invoice with purchase order, attaching shipping reports with appropriate notations verifying receipt and condition of items on report, marking invoices as paid, checking pricing and extensions, and checking to ensure that sales tax is not being charged.

BB. Martin District will develop and submit to the Public Service Commission, no later than 60 days after the date of the execution of this agreement proposed internal controls to ensure that work orders are completed and that all information on such orders is correct.

CC. Martin District will install and connect new services within the time periods set forth in Administrative Regulation 807 KAR 5:006, Section 13(4), and will amend its filed rate schedules to provide for procedures for the inspection of water service lines prior to providing water service in accordance with Administrative Regulation 807 KAR 5:006, Section 9(3).

DD. Martin District will pay interest on customer deposits in accordance with Administrative Regulation 807 KAR 5:006, Section 7(6), and will maintain a current list of customers who have paid deposits.

EE. Martin District recognizes its obligation under KRS 65.065 to prepare annual operating budgets and to

submit such budgets to Martin County Fiscal Court no later than 30 days prior to the beginning of the water district's fiscal year.

FF. Martin District will file with the Public Service Commission, no later than 30 days after the date of the execution of this agreement, its Annual Report for the year ending December 31, 2001 and December 31, 2002.

GG. Martin District will discontinue water service, in accordance with its tariffed rules and Public Service Commission regulations to those customers who fail to pay their bills in a timely manner and fail to keep their accounts current.

HH. Martin District, through its Board of Commissioners, will, no later than 30 days after the date of the execution of this agreement, adopt a resolution requiring members of Martin District's Board of Commissioners to attend at least 12 hours of certified water district commissioner training biennially and shall provide for the reimbursement of a member's reasonable expenses to attend such training.

II. Martin District will develop and submit to the Public Service Commission, no later than November 1, 2003, a policy for training of employees employed by or on behalf of Martin District as of October 1, 2003. This policy shall, at a minimum, require the general manager and all office employees to attend at least 10 hours of Public Service Commission Water Personnel Training no later than August 31, 2004 or within 18 months of their hiring, whichever is later, and shall provide for the reimbursement of an employee's reasonable expenses to attend such training.

JJ. Martin District will reaffirm, no later than 30 days after the date of the execution of this agreement, its present code of ethics for the members of its Board of Commissioners and shall annually with the filing of its annual report with the Public Service Commission identify any revisions to this code.

KK. Martin District will reaffirm, no later than 60 days after the date of the execution of this agreement, its adoption of the provisions of KRS 45A.343 to 45A.460 to govern its procurement decisions. Such provisions shall not

apply to purchases or services that American Water Services makes to fulfil its obligations under the management contract that it and Martin District executed on October 1, 2002.

LL. Martin District will review the use of the county attorney to provide legal services to Martin District and report to the Public Service Commission, no later than December 1, 2003, on the results of such review.

MM. Martin District will develop and submit to the Public Service Commission, no later than 60 days after the date of the execution of this agreement, a written policy on emergency planning procedures and will implement such procedures upon Public Service Commission review of such procedures.

NN. Martin District will develop and submit to Public Service Commission, within one hundred eighty (180) days of execution of this Agreement, written leak detection procedures. These procedures will include procedures to prepare meaningful water loss reports on a monthly basis. Martin District will immediately implement such procedures upon Public Service Commission review and approval.

OO. Martin District will, if it hires any additional employees, develop and implement written procedures and policies for the hiring, evaluation and retention of employees, to include standards for determining an employee's compensation level.

PP. Within ninety 90 days of execution of this agreement, Martin District shall develop and maintain an up-to-date map of the distribution system and update the map as necessary to reflect the current configuration and apparatus of the distribution system.

QQ. Martin District will comply with all regulations and requirements of the Kentucky Cabinet for Natural Resources and Environmental Protection.

2. The Public Service Commission should assess Martin District a penalty of two thousand five hundred dollars (\$2,500) for failure to obtain a Certificate of Public Convenience and Necessity from the Public Service Commission before constructing its

raw water supply pipeline. This penalty should be suspended for a period of two years. If at the end of this period, Martin District has fully complied with the terms of this Agreement and is in substantial compliance with all Commission regulations, this penalty should be vacated. If at any time during that period, Martin District fails to comply with the terms of this Agreement or fails to substantially comply with any Commission regulation, the penalty shall immediately become due and payable.

3. This Agreement is subject to the acceptance of and approval by the Public Service Commission.

4. This Settlement Agreement constitutes full satisfaction of any penalties against Martin District arising out of this proceeding or any conduct occurring on or before April 5, 2002.

5. If the Public Service Commission fails to accept and approve this Settlement Agreement in its entirety, this proceeding shall go forward and neither the terms of this Settlement Agreement nor any matters raised during settlement negotiations shall be binding on either signatory.

6. If the Public Service Commission accepts and adopts this Settlement Agreement in its entirety and enters an order in this proceeding to that effect, Martin District shall not apply for rehearing in this proceeding nor bring an action for review of that order.

IN WITNESS WHEREOF, Martin District and Commission Staff have executed this Settlement Agreement the day and year first above written by and through their duly authorized attorneys.

STAFF OF PUBLIC SERVICE COMMISSION
OF KENTUCKY

BY:

John E. S. T.

TITLE:

Council for P.S.C.

MARTIN COUNTY WATER DISTRICT

BY:

My Scott

TITLE:

CHAIRMAN